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No. 91-1039

In The

Supreme Court of the United States

October Term, 1991

WALTER FULLER AIRCRAFT SALES, INC.,

Petitioner,

versus

FAYSOUND LIMITED,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT'S SUPPLEMENTAL BRIEF IN OPPOSITION

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Respondent FAYSOUND LIMITED submits this supplemental brief in opposition, pursuant to Supreme Court Rule 15.7.

On January 14, 1992, this Court decided *Smith v. Barry*, ___ U.S. ___, 60 U.S.L.W. 4065 (1992), concerning the adequacy of a document filed in the Court of appeals to serve as a notice of appeal. *Smith v. Barry* does not control this case, as Petitioner contends, and is significantly different.

In *Smith*, the Court of Appeals held that a brief could not serve as a notice of appeal. In sharp contrast to this case, the Court of Appeals there sent out to a prisoner

acting *in pro per* a questionnaire it sends to such appellants and styles an "informal brief". It was returned within the time for appeal. It was to be seriously reviewed by the court, in contrast to Petitioner's letter and enclosure in question here, which had only to do with schedule and referred to expected notice from Respondent. That case involves action by the court, giving "assurance by a judicial officer" that an appeal has been properly taken, and is clearly within the rule of "unique circumstances", under *Thompson v. INS*, 375 U.S. 384 (1964) and *Osterneck v. Ernst & Whinney*, 489 U.S. 169 (1989).

In *Smith*, the Court of appeals did not go forward to analyze the information the brief conveyed, as it must now do on remand. Here, the Court went forward and reviewed the letter and enclosure and determined that they were not adequate to alert the court to their being the "functional equivalent" of a notice of appeal.

The court here did not take the position that the documents filed must be entitled "notice of appeal" and that position is not "central," or even involved, in its decision.

Respectfully submitted,

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